IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

OP.No. 28304 of 2002(T)

PETITIONER:

V. BALAKRISHNAN, S/O. VELAYUDHAN,
RESIDING AT 'AUM SANTHI', PUTHIYAKKAVU,
MAVELIKKARA.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.PRINCE.K.ELIAS

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED
BY THE SECRETARY TO POWER (A) DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CHIEF ELECTRICAL INSPECTOR,
ELECTRICAL INSPECTORATE, THIRUVANANTHAPURAM.

3. THE DEPUTY CHIEF ELECTRICAL
INSPECTOR, ERNAKULAM.

4. THE CHIEF ENGINEER, BUILDINGS AND
LOCAL WORKS, P.W.D., THIRUVANANTHAPURAM.

5. THE EXECUTIVE ENGINEER,
BUILDING DIVISION, P.W.D., ERNAKULAM.

BY GOVERNMENT PLEADER SRI. BASANT BALAJI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF REPRESENTATION DT. 15-7-1984

EXT.P2 DO. DT. 30-11-1985.

EXT.P3 DO. DT. 20-7-1990.

EXT.P4 COMMUNICATION DT. 5-6-1992.

EXT.P5 REPRESENTATION DT. 6-8-1993.

EXT.P6 ORDER PASSED BY LOK ADALATH DT. 29-5-2002.

EXT.P7 LETTER DT. 23-3-2000.

EXT.P8 LETTER DT. 16-7-2000.

EXT.P9 LETTER DT. 17-9-2001.

EXT.P10 ORDER DT. 12-8-2002.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 28304 of 2002

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Dated this, the 3rd January, 2007.

J U D G M E N T

Petitioner is the owner of a building right in the middle of the Cochin city. This has been rented out to the 2nd respondent for housing the office of the 3rd respondent. That was in 1984. At that time, the rent agreed was Rs. 1294/- per month. In spite of several requests, copies of which have been produced in this original petition, the respondents refused to consider the petitioner's request for enhancement of rent for a long period till 1999. They also refused to vacate the premises. Ultimately, the parties approached the Lok Adalath organised by the District Committee of the Kerala Legal Services Authority, Ernakulam. In that, the parties came to a settlement pursuant to which the Lok Adalath passed the following order in Ext. P6:

> "1. The respondent is hereby directed to vacate the petition schedule building No. 39/2718 of Cochin Corporation within six months from today as agreed upon, failing which the petitioner can execute this award through court.
>
> 2. It is also agreed by the respondent that the request of the petitioner for enhancement of rent for the previous period for which he earlier applied, but not in proper form, will be reconsidered on presentation of proper application for that purpose. Respondent agree that the building No. 39/2718 occupied by the respondent will be vacated within a period of six months from today.
>
> 3. It is also agreed by the respondent that the request for enhancement of rent for the previous period will be favourably considered on receipt of a proper application for that purpose."

2. Pursuant to the same, the petitioner filed a proper application. After considering his application, Ext. P9 communication has been issued to the petitioner stating that the rent has been fixed to Rs. 16,200/- from 15-6-1999. This was followed up by Ext. P10. Both by Exts. P9 and P10, the Government took the stand that the rent can be re-fixed only with effect from 15-6-1999 since that was the

date on which the petitioner filed application in the proper form. Exts. P9 and P10 are under challenge in this original petition.

3. Petitioner's contention is that the petitioner has all along been requesting for enhancement of rent from time to time. The petitioner was never informed about the necessity to file an application in a proper form. Even then, in Ext. P6, the Chief Electrical Inspector himself had agreed that the request of the petitioner for enhancement of rent for the previous period for which he had earlier applied but not in proper form, will be re-considered on presentation of proper application for that purpose. The petitioner contends that in view of the said specific agreement, Government cannot take the stand that they will grant enhancement of rent only from the date the petitioner applied subsequent to Ext. P6 order of the Lok Adalath. Learned Government Pleader submits that since the petitioner had applied only on 15-6-1999 in the proper form, he can only get enhancement from that date and not before.

4. On a consideration of the rival arguments, I am of opinion that in view of Ext. P6, the respondents cannot now take the stand that the rent would be enhanced only from the date of the application filed by the petitioner subsequent to Ext. P6, since, in Ext. P6 itself, the respondents had specifically agreed that petitioner's request for enhancement of rent for the period for which he earlier applied but not in the proper form will be re-considered on presentation of proper application for that purpose. From the same, it is abundantly clear that what was in contemplation between the parties was enhancement of rent with retrospective effect for the previous periods also. That being so, the respondents cannot now take a stand that they would only enhance the rent from the subsequent date of application filed by the petitioner.

In the above circumstances, I quash Exts. P9 and P10 to the extent it limits the enhancement of rent from 15-6-1999 onwards. The 1st respondent is further directed to re-consider the matter in the light of Ext. P6 as well as the observations contained in this judgment for enhancement of rent for the previous periods also retrospectively as agreed to by them in Ext. P6. The original petition is allowed as above.

Sd/- S. Siri Jagan, Judge.

Tds/

S. Siri Jagan, J.

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O.P. No. 28304 of 2002

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J U D G M E N T

3rd January, 2007.